

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DALE PERKINS, : Case No. 3:11-cv-188
Plaintiff, : Judge Timothy S. Black
vs. :
TEKNI-PLEX, INC., :
Defendant. :
:

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AS MOOT (Doc. 4)**

This case is before the Court on Defendant's Motion to Dismiss. (Doc. 4).

Following the filing of Defendant's Motion, Plaintiff filed an Amended Complaint, purportedly pursuant to Fed. R. Civ. P. 15(a)(1)(B).¹ Because the Amended Complaint superseded the original Complaint, and because Defendant's Motion is directed to the original Complaint, Defendant's Motion is now moot. *See Perkins v. Sun Chemical Corp.*, No. 1:10cv810, 2011 WL 1403069, at *2 (S.D. Ohio Apr. 12, 2011).

Accordingly, Defendant's Motion to Dismiss (Doc. 4) is **DENIED AS MOOT**.

IT IS SO ORDERED.

Date: July 15, 2011

s/ Timothy S. Black

Timothy S. Black
United States District Judge

¹ Fed. R. Civ. P. 15(a)(1)(B) provides that a pleading may be amended "once as a matter of course . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Here, Defendant filed the Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) on June 8, 2011, and Plaintiff filed the Amended Complaint on June 30, 2011, i.e., 22 days after the filing of Defendant's 12(b) Motion. Insofar as the Amended Complaint was filed outside of the time frame allowed by Rule 15(a)(1)(B), the Court nevertheless grants Plaintiff leave to file the Amended Complaint effective June 30, 2011, and, therefore, deems Plaintiff's Amended Complaint properly filed with leave of Court.